



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup
Professionals

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PROFESSIONAL CONDUCT COMMITTEE
Minutes of Meeting on February 12, 2008
[Approved on March 27, 2008]

Prepared by: Terry Wood

Meeting Location: Massachusetts Department of Environmental Protection, Central Regional Office, Worcester, MA.

1. Call to Order: Robert Luhrs called the meeting to order at 1:35 p.m. Also present were Janine Commerford, Gail Batchelder, Kirk Franklin, Gretchen Latowsky, Paul Mullen, and Debra Stake. Committee members absent: Deborah Farnsworth, Christophe Henry, Kelley Race, and Debra Phillips. Staff members present were Allan Fierce, Brian Quinlan, Lynn Read, Ron Viola, Terry Wood and Al Wyman. Also present was Wesley Stimpson, the LSP Association's Executive Director.

2. Announcements: None.

3. Previous Minutes: The draft minutes of the meeting held on January 8, 2008 were approved with minor edits.

4. Old Business

A. Status of CRTS

At Ms. Luhrs's request, the chair of each CRT reported on progress made during the last month. Ms. Commerford stated that she had left a message with Chief Magistrate Taylor at the Division of Administrative Law Appeals ("DALA") last week and received a call back on Monday, February 11 stating a decision in one of the two pending Board appeals was ready and would be issued shortly.

The Committee members appointed Ms. Latowsky to sign the Administrative Consent Order regarding cases 02C-04 and 07C-07.

B. Update re: Web Site Subcommittee

Ms. Commerford stated that the subcommittee has not met.

C. Update re: recommended decisions from DALA

See Ms. Commerford's comments in Section A above.

D. Review draft table (addendum) to six-month status report re: Board Policy 2007-1

After discussion, the Committee instructed Mr. Fierce to attach the table to the six-month status report that the Committee had reviewed at the January meeting.

5. New Business

A. Discuss how to handle upcoming appeals

Mr. Fierce stated that an LSP may file an appeal in a disciplinary case in the near future and the Committee had discussed the possibility of trying some other format for appeals other than using DALA. He stated that whatever format the Committee decided to use, the format should ideally allow the appeal to be completed within the timelines established for appeals under Board Policy 2007-1.

Mr. Fierce stated that when the Committee last discussed the issue of upcoming appeals the members had discussed using a panel of two Board members and a hearing officer. He also stated that Anne Lowery of MassDEP's Office of Appeals and Dispute Resolution (OADR) had come to speak to the Committee about the possibility of using OADR to hear appeals and/or preside over prescreening conferences.

Mr. Fierce also explained that he, Ms. Read, and Ms. Wood met with Sal Giorlandino, Acting Chief Presiding Officer of OADR, last week about the possibility of using OADR hearing officers for Board disciplinary appeals. Mr. Fierce reported that OADR has agreed to handle one Board appeal as a pilot and they are open to trying the panel model with two Board members and an OADR hearing officer. Mr. Fierce also reported that Mr. Giorlandino indicated that OADR could abide by the timelines stated in Board Policy 2007-1. Mr. Giorlandino stated that Laurel MacKay, an OADR hearing officer with 21E experience, would serve as the hearing officer for the pilot. Mr. Giorlandino indicated that the Board would be required to prepare a memo barring *ex parte* communications between OADR and Board members and/or Board staff.

Ms. Commerford stated that the options the Committee has discussed in the past were to use either a single hearing officer or a panel of two Board members and a hearing officer.

Mr. Luhrs asked Mr. Stimpson if he believed the LSPA would perceive a problem if a hearing officer from OADR heard a Board appeal. Mr. Stimpson stated that he did not believe the LSPA would have a problem with an OADR hearing officer, but he added that he

believes the LSPA would think it was problematic if the appeal were heard by a panel of two Board members and a hearing officer.

After some discussion regarding whether to return to DALA for the next disciplinary appeal, a motion was made and seconded to choose some other option other than DALA. The motion passed with a vote of 7 (Ms. Commerford, Ms. Batchelder, Mr. Franklin, Ms. Latowsky, Mr. Mullen, and Ms. Stake) to 1 (Mr. Luhrs).

After some discussion, a motion was made and seconded that the next Board appeal be heard by a single OADR hearing officer. The motion passed unanimously.

Mr. Fierce will communicate to Mr. Giorlandino that the Committee would like to use Ms. MacKay as the sole hearing officer instead of as a member of a panel with two Board members. If Mr. Giorlandino indicates that OADR would prefer the panel model, Mr. Fierce will let the Committee members know via e-mail. Mr. Fierce will prepare a memo for the Committee's review at the March meeting stating that the Board members and Board staff agree that no *ex parte* communications will be allowed with OADR hearing officers.

6. Future Meetings

The Committee is next scheduled to meet on March 27, 2008 at JSI in Boston; however, in light of the fact that a number of cases may be ready to present at next month's quasi, Mr. Fierce will send an e-mail to the Committee to determine if the next meeting should be held on a different date when Committee members would be available for an all-day meeting. The Committee will also meet on April 30, 2008 at a location to be determined.

7. Adjournment: The meeting was adjourned at 3:10 p.m.